

Maritime NZ continues to “push the boat out” as a health and safety regulator. In our last [issue](#), we covered its prosecution of a New Zealand company whose worker was injured while overseas. In this issue, we look at some novel and significant charges Maritime NZ has filed against Ports of Auckland and an individual following the death of a worker last year. We also touch on WorkSafe’s advice to farmers as spring approaches, more convictions after a quad bike death and the death of a worker in Queensland when working in very hot weather conditions. Finally, we have an article on the conviction of a pest control company after a worker nearly died from chemical poisoning.

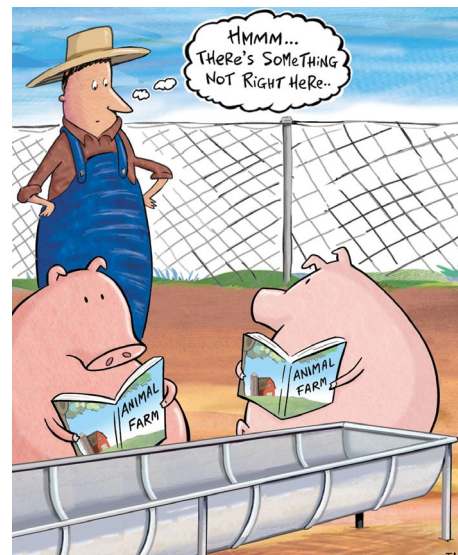
## WorkSafe issues safety warning as farmers start to get busier during spring

In 2020, fatalities on farms spiked during August and September. As a result, WorkSafe has issued a [warning](#) to farmers to be mindful of risks on farms during spring.

WorkSafe says there are four key things that farmers should consider doing to avoid accidents. These are to:

- Look at how you are managing [fatigue](#) on your farm – tired people make mistakes.
- If your farm vehicle has a [seatbelt](#), you should be wearing it – almost half of vehicle-related deaths on farms could be avoided if seatbelts were used.
- Install a [crush protection device](#) on your quad – in many incidents, someone is crushed or unable to escape due to the weight of the bike, contributing to fatal or life-changing injuries.
- Don’t make assumptions that new staff or those new to the sector know what they are doing around [large animals](#) – provide necessary training until you are satisfied that they are competent.

WorkSafe has extensive [guidance](#) on how to stay healthy and safe on the farm. VL encourages all those in the sector to take some time to become familiar with it.



## Conviction costs company \$379k after worker poisoned during manufacturing process

A South Island company that manufactures pest control products has been [convicted](#) of both health and safety and hazardous substance offences after a worker almost died as a result of chemical poisoning.

The company was experiencing problems securing its supply of sodium fluoroacetate, which is the key ingredient in 1080 bait. Therefore, it decided to set up a project to manufacture its own supply. The incident occurred during the first trial production when an unexpected chemical reaction resulted in a loss of containment. The worker spent four weeks in hospital being treated for poisoning and two months recuperating after the chemical exposure.

The investigation found that the company failed to develop, document, implement, and communicate a safe system of work for the operation of the hazardous production process including an absence of detailed operating procedures, automatic data logging,

appropriate personal protective equipment, and an emergency response plan.

The company also failed to comply with its obligations under the Health and Safety at Work (Hazardous Substances) Regulations 2017 because it did not obtain the correct compliance certificates for the hazardous substances used in the process. It also failed to prepare an accurate site plan and safety data sheet that was readily accessible for emergency service workers or anyone else who was likely to be exposed to the substance.

At sentencing, the company was fined \$275,000 and ordered to pay \$8,177 in reparation in addition to what it had already paid the victim. It was also ordered to pay a substantial \$96,603.94 in costs to WorkSafe, once again confirming the emerging trend of increasing regulator costs being awarded by the Courts at sentencing.

## Maritime NZ files charges against Ports of Auckland and an individual following a death

[Maritime New Zealand](#) has filed charges against both Ports of Auckland Limited (POAL) and an individual in relation to the death of a worker at the Auckland Port on 30 August 2020. The worker was crushed when a container was dropped during a lifting operation.

[Radio New Zealand](#) has since reported that the individual charged is Tony Gibson, the former Chief Executive of POAL. Mr Gibson [resigned](#) from the company in June this year. Significantly, if Mr Gibson is the person charged by Maritime NZ, it will be the first prosecution of an Officer employed by a large company in circumstances where the Officer is far removed from the work taking place when an incident occurred. The few charges filed against officers to date have generally been against “working directors” who have direct involvement in the day-to-day work that resulted in the harm.

POAL is facing three charges in total. The first is under section 48, which is the standard charge used for health and safety offending by a PCBU and carries a maximum penalty of \$1.5 million. POAL is also facing the more serious charge of reckless conduct in respect of a health and safety duty which carries a maximum penalty of a fine of up to \$3 million.

The third charge against POAL is highly unusual and to VL’s knowledge, this is the first time it has been used in New

Zealand. It relates to adverse conduct for a prohibited health and safety reason. [Adverse conduct](#) generally means behaving in a way that discriminates against a worker or other person. In the health and safety context it can mean taking or organising (or threatening to take or organise) action that is intended to coerce or induce a person to perform or exercise, or not to perform or exercise, powers or functions under HSWA. This includes holding a person back from seeking or undertaking a HSWA related role such as being a health and safety representative. Adverse conduct can also involve a person knowingly or recklessly making a false or misleading representation to another person about that person’s rights or obligations under HSWA - including their ability to make a complaint to a health and safety regulator, or their ability to initiate or participate in a process or proceedings under the Act.

The charges against the POAL individual include a section 48 charge, which carries a maximum fine of \$150,000, and the less serious section 49 charge with a maximum fine of \$150,000.

This is the third recent prosecution of POAL resulting from a port related death. We covered the record fine handed down to POAL from its last conviction in the January issue of [The Safe Side](#).

## Queensland heat related death lands a horticultural company in Court

A farm operator in [Queensland](#) has been prosecuted for exposing workers to heat risk after a backpacker picking pumpkins died from multiple organ failure due to heat related illness. He was on his second day on the job.

A report obtained from a heat related illness expert outlined the safety controls that could have been implemented to address the heat related risk, including the provision of shade for rest areas, a thermal risk assessment, the provision of training in relation to heat stress

management, and moving the picking to cooler times in the day. The company was fined AUD\$100,000.

While we are still a few months away from the very hot weather in New Zealand, it might be time for businesses to start planning to keep workers safe during summer work. The Queensland Health and Safety Regulator has useful [guidance](#) on how to manage heat stress both indoors and outdoors.

## Two prosecutions follow another quad bike death

A second conviction in as many months for a quad bike fatality saw [two companies sentenced](#) in the Timaru District Court on August 5.

In September 2018, a farm worker died as a result of crushing injuries sustained during a quad bike rollover. The resulting WorkSafe investigation found that the condition of the quad bike was consistent with a vehicle that had been in regular use but had not been serviced for a prolonged period. The quad bike’s brakes, steering, suspension, and front bull bar/bumper were all in need of servicing/repair. WorkSafe concluded that the quad bike was not fit for use in a farming environment.

The two companies that were prosecuted had purchased a crush protection device for the quad bike but tragically,

had not installed it at the time of the incident. “However,” WorkSafe commented, “the poor maintenance and servicing of the machine would still have exposed users to significant risk.”

WorkSafe said one of the companies should have developed, implemented, monitored and reviewed an effective safe system of work for employees operating the quad bike. The other company should have ensured the quad bike was properly serviced and maintained. A fine of \$257,500 was imposed with each company paying 50%. Reparations of \$110,000 were also ordered to be paid to the victim’s family. Again, each company paid 50% of the total ordered.